

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Toll Free Service Access Codes) CC Docket No. 95-155
)
)

REPLY COMMENTS OF THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION

DOCKET FILE COPY ORIGINAL

The Competitive Telecommunications Association
("CompTel") submits the following reply to comments filed in
the above-captioned proceeding.

I. OVERVIEW

Well over 60 parties submitted comments in this docket, demonstrating a very high degree of public interest in 800 and 888 number assignment issues. This interest level also is reflected in the large attendance at the Commission-sponsored industry meetings which have been held to discuss the procedure and schedule for implementation of the new 888 access code.¹

In addition to the importance of the issues, the timing of Commission action also is clearly critical. Based on the discussions at previous FCC-sponsored industry meetings on these matters, orders for 888 numbers might be accepted as early as mid-January, 1996. Because some proposals in the

¹ The next such meeting is scheduled for November 29, 1995. Public Notice No. 806, issued November 9, 1995.

No. of Copies rec'd
List ABCDE

CT 4

NPRM address order entry rights and procedures, requests for 888 numbers should not be accepted in the SMS before the Commission adopts final orders relating to these proposals. Thus, the Commission should act promptly on the issues of most immediate importance, as suggested in CompTel's Comments.

Overall, the commenters generally have recognized that the recent number shortage and related problems were temporary transitional concerns.² They do not indicate a need for wholesale reform of the number assignment process or for drastic regulatory measures such as detailed reporting, certification, record retention, or auditing requirements. CompTel agrees that the Commission need only take limited, but immediate action on certain transitional measures, and can consider longer term measures in a later phase of this proceeding.

II. THE COMMENTS SUPPORT CONTINUED RELIANCE ON A FIRST-COME, FIRST-SERVED RESERVATION SYSTEM.

The comments show a strong industry consensus in favor of using the current first-come, first-served approach on an ongoing basis. The vast majority of industry commenters agree with CompTel that the current system has operated without serious problems except during the recent number

² See, e.g., Paging Network at 2; US West at 35; AT&T at 2.

shortage.³ Once the new 888 access code is introduced, the shortage will disappear, and the first-come, first-served method should return to its prior acceptable level of performance. Therefore, the Commission should not adopt mandatory dispute resolution, lottery, or auction procedures for toll-free codes.⁴

There is a further strong consensus among the commenters that (1) number reservations should be in response to identifiable subscriber requests, but (2) such subscriber requests need not be in writing. Requiring an affirmative request will discourage improper or inefficient reservations of toll-free numbers, while permitting RespOrg flexibility in obtaining such requests will avoid unnecessary intrusions into legitimate marketing activities. MCI's claim that carriers would not be able to offer a "package" of services is unfounded.⁵ CompTel believes a customer's acceptance of a package with full disclosure that it includes a toll-free number would sufficiently meet the requirement. The

³ See, e.g., AT&T Comments at 13; MCI Comments at 8; U.S. West Comments at 1-2; USTA Comments at 9.

⁴ If some time period before the introduction of 888 codes is set aside for carriers to reserve numbers in advance, it is important for the Commission to ensure that the reservation process does not disadvantage smaller RespOrgs and that all reservation requests are implemented in a nondiscriminatory manner.

⁵ See MCI Comments at 2.

affirmative request requirement would discourage number speculation, not legitimate carrier marketing.

The comments overwhelmingly recognize that RespOrgs should be given flexibility when receiving a customer request. Among industry participants, only US West supports the concept of a mandatory written order from 800/888 service subscribers before a RespOrg may reserve a toll-free number.⁶ The great bulk of commenters addressing the topic, however, share CompTel's view that a written order would unnecessarily impede service order requests, which frequently are received over the telephone.⁷ Written requests are not necessary in every case, and certainly should not be required before a number reservation is made. A better approach is for the Commission to permit RespOrg flexibility, but to encourage written confirmations of orders by affording them conclusive significance in the resolution of disputes.

III. THE COMMENTS OPPOSE AN ESCROW REQUIREMENT

There is nearly universal opposition to the proposal to force RespOrgs to put money into an escrow account for each number ordered. Most commenters agree that this proposal will be ineffective and an administrative burden for RespOrgs, the SMS administrator, and the Commission.

⁶ US West Comments at 3-4.

⁷ See, e.g., Ameritech Comments at 3-4; AT&T Comments at 7; Sprint Comments at 2-3.

Further, an escrow requirement would create a barrier to entry disadvantaging smaller RespOrgs and new toll-free customers.⁸ Even the few commenters supporting an escrow requirement recognize that the Commission must mitigate its negative impact on smaller companies.⁹

In short, the record strongly suggests that an escrow requirement simply is not an effective tool to prevent improper or inefficient use of the toll-free resource. Any marginal benefit it might produce in this area is outweighed by the administrative burden and harmful side effects of the requirement.

IV. THE COMMENTS SUPPORT SOME ACTION TO PREVENT WAREHOUSING

By contrast, the comments filed by industry participants generally agree that the "warehousing" of toll-free access codes is an inefficient use of the toll-free resource, and should be prevented.¹⁰ Although parties offered slightly different definitions of "warehousing," all agree that the core harm caused by warehousing is the removal of a number from the database without a corresponding legitimate use for

⁸ See, e.g., LCI Comments at 4-5; Cable & Wireless Comments at 3; Sprint Comments at 5; Comments of Pacific Bell and Nevada Bell at 3; Comments of SNET at 7.

⁹ Qwest Communications at 3-4.

¹⁰ See, e.g., AT&T Comments at 19-20; MFS Comments at 9; NYNEX Comments at 3; SNET Comments at 7-8.

that number. This practice is unreasonable, and the Commission should act to prohibit it.

There also is general agreement that the Commission should not define low or (at times) zero usage as warehousing. There are many legitimate reasons a number may have zero or negligible usage, such as numbers retained to handle seasonal demand. In addition, the assumption that low usage is less valuable than higher volume uses is unfounded and anti-competitive.¹¹ Most commenters agree it would be improper to place the burden upon RespOrgs to police their own subscribers' usage.¹² Therefore, the Commission should exclude from its definition of warehousing (or hoarding) any tests based upon the level of subscriber usage.

Finally, as many of the comments recognize, several Commission proposals will have an indirect effect on warehousing of numbers. For example, the reduction of various lag times will reduce the amount of time that a number, if warehoused, can remain unavailable. Nevertheless, it is important to recognize that these proposals are not the Commission's anti-warehousing policy, and they should be evaluating according to their own merits, not on their indirect effect on warehousing. The possibility that the proposal will have an indirect effect on the harm that flows

¹¹ See PCIA Comments at 5-6.

¹² Eg., Sprint Comments at 15; Ameritech Comments at 27-28.

from warehousing should not be a consideration, since the Commission can address that issue directly.

V. THE COMMISSION SHOULD NOT GRANT A RIGHT OF FIRST REFUSAL FOR VANITY NUMBERS

The most dramatic contrast in the comments concerns a right of first refusal for current users of 800 numbers. A host of users and user groups supported such a right and indicated that they intend to exercise the right, if it is granted. Several supported a right of first refusal to augment allegedly inadequate trademark protection.

On the other hand, nearly all LECs and IXC's (except MCI) oppose a right of first refusal for current 800 number subscribers.¹³ These organizations, including CompTel, point out that longstanding policy makes clear that there are no proprietary rights granted in telephone numbers. Telephone numbers are a public resource, not the private right of the user. A right of first refusal for current 800 users would create a dangerous precedent departing from this principle. For example, if 800 users received this right with respect to 888 numbers, they might also claim a corresponding right to numbers with other prefixes, such as 500, 700, or 900. Similarly, a right of first refusal here would set a precedent that might be relied upon by telephone users

¹³ See, e.g., Airtouch Paging Comments at 14; Sprint Comments at 20; Bell Atlantic Comments at 8; Paging Network Comments at 13.

seeking corresponding rights to ten-digit numbers in adjacent (or overlay) area codes.

The alleged inadequacy of trademark law is not a reason to grant a right of first refusal. Initially, supporters of a right of first refusal do not dispute that trademark law already provides several significant rights to users of 800 numbers. Reasonable minds can differ on whether those rights are "adequate," but this difference of opinion should not be the Commission's concern.¹⁴ The Communications Act's goal is to foster "rapid, efficient, Nation-wide and world-wide" telecommunications, not to safeguard the public from lawful uses of telephone numbers that might result in a misunderstanding regarding the source of a good or service. To the extent 800 users desire greater rights to avoid confusion, they should address their concern to Congress and the courts, not the FCC.

In any event, it is clear that a right of first refusal would be very inefficient. First, there is no practical way to limit the universe of users eligible for such a right. Although some commenters tried, there is no way to identify a class of "vanity" numbers eligible for special protection. Numbers which translate into words, such as 800-FLOWERS and

¹⁴ As CompTel noted in its initial comments, trademark law is developed through the case method, and issues relating to telephone numbers are relatively recent in origin. CompTel Comments at 13. The Commission should allow this area of the law to develop more fully, aided in appropriate circumstances by primary jurisdiction referrals to the FCC.

800-HOLIDAY, are potential vanity numbers, but other memorable numbers cannot be excluded.¹⁵ There is no principled basis for excluding numbers such as 800-123-4567, or 800-333-3333, or any number that is advertised by a user. As Cable & Wireless noted, beauty (or value) is in the eye of the beholder.¹⁶ Accordingly, many commenters agreed with CompTel that the only workable approach to a right of first refusal would extend the right to all current 800 number users.¹⁷ Second, the vigor of the users' comments strongly suggests that any right would be exercised by a substantial percentage of eligible users, needlessly reducing the quantity of available 888 numbers. Thus, a right of first refusal would go a long way toward defeating the very purpose for which this proceeding was initiated.

¹⁵ Moreover, many numbers could be made to spell certain words, even though the words may not be promoted by the user as a "vanity" number. For example, the number 800-226-3437 spells "CANDIES," but this number is not used by a candy manufacturer or supplier. This number would be eligible for special "vanity" protection under many commenters' proposals, however.

¹⁶ Cable & Wireless Comments at 3.

¹⁷ Cable & Wireless Comments at 5; Comments of Ameritech at 31; Comments of Telecompute, Corp. at 3-4; Comments at Southwestern Bell at 16.

CONCLUSION

CompTel urges the Commission to act expeditiously on those issues which need to be resolved prior to the submission of 888 number reservation requests. In so doing, the Commission should rely on the current first-come, first-served assignment methodology. The Commission should make clear that it does not intend to require written requests from end users or monetary escrow deposits from RespOrgs as part of this process. Similarly, the FCC should decline to create a proprietary interest in 800 numbers and refuse to grant a right of first refusal in corresponding 888 numbers. Further, the Commission should adopt reasonable measures to prevent warehousing of toll-free numbers.

Respectfully submitted,

**THE COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION**

By: Genny Morelli
Genevieve Morelli
Vice President and
General Counsel
**THE COMPETITIVE
TELECOMMUNICATIONS
ASSOCIATION**
1140 Connecticut Ave., N.W.
Suite 220
Washington, D.C. 20036
(202) 296-6650

Its Attorney

November 20, 1995